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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JESSICA AUGUSTINE, individually,
and on behalf of all others similarly
situated, and the general public,

Plaintiff,

v.

NATROL PRODUCTS, INC.,

Defendant.

CASE NO.: 3:13-cv-03129-H-DHB

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

- 1. VIOLATION OF CALIFORNIA
CONSUMER LEGAL REMEDIES
ACT [CIV. CODE §§ 1750, *et seq.*];**
- 2. VIOLATION OF CALIFORNIA
UNFAIR COMPETITION LAW [BUS.
& PROF. CODE §§ 17200, *et seq.*];**
- 3. VIOLATION OF CALIFORNIA
FALSE ADVERTISING LAW [BUS. &
PROF. CODE §§ 17500, *et seq.*];**
- 4. BREACH OF EXPRESS
WARRANTY;**
- 5. BREACH OF THE IMPLIED
WARRANTY OF
MERCHANTABILITY.**

DEMAND FOR JURY TRIAL

1 Plaintiff Jessica Augustine by and through her attorneys of record, bring this
2 action on behalf of herself, all others similarly situated, and the general public ("Plaintiff")
3 against Defendant NATROL PRODUCTS, INC., ("Natrol" or "Defendant"). Plaintiffs
4 allege the following upon their own knowledge, or where there is no personal knowledge,
5 upon information and belief and the investigation of their counsel:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as
8 amended by the Class Action Fairness Act of 2005, as a matter in controversy that
9 exceeds the sum of \$5,000,000.00, exclusive of costs and interest. On information and
10 belief, more than two-thirds of the members of the class are citizens of a state different
11 from the Defendant. This Court has supplemental jurisdiction over the state law claims
12 pursuant to 28 U.S.C. § 1367.

13 2. Personal jurisdiction derives from the fact that the Defendant is incorporated in
14 California, maintains its principal place of business in California, and conducts business
15 within the State of California and within this judicial district.

16 3. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b)(2) because
17 many of the acts and transactions occurred in this district and because Defendant:

- 18 (i) is authorized to conduct business in this district and has intentionally
19 availed itself of the laws and markets within this district through the
20 promotion, marketing, distribution and sale of its products in this
21 district;
22 (ii) does substantial business in this district;
23 (iii) advertises to consumers residing in this district; and
24 (iv) is subject to personal jurisdiction in this district.

25 **PARTIES**

26 4. On information and belief, at all times relevant to this matter Defendant
27 Natrol Products, Inc. was a California corporation with its principal place of business
28 located at 21411 Prairie Street, Chatsworth, California 91311.

1 12. In addition, Plaintiff and the class would not have purchased the Product, but
2 for the Product's deceptive labeling claims.

3 13. Defendant's advertising of its Product is and has been the subject of an
4 extensive and comprehensive, nationwide marketing campaign in various media including
5 the internet.

6 14. Defendant primarily advertises and promotes its Product through labeling
7 claims on the front of the Product's package. Label descriptions on the Product's
8 packaging, taken as a whole, clearly indicate what the Product is supposed to do and all
9 members of the class were exposed to the Product's labels as depicted herein because
10 Defendant's labeling is and was uniform throughout the U.S.

11 15. Like other members of the class, Plaintiff saw, understood, and relied on the
12 labels included in this Complaint, including but not limited to: the false or misleading
13 claims on the Product, stating "Super Dieter's Tea," "All Natural," "No Artificial
14 Ingredients," "Your Cup of Tea TM," "Dieting can be ... satisfying... with the help of my
15 flavorful all natural Super Dieter's Teas," "perfect, low-calorie solution to help balance
16 your lifestyle and provide soothing results," "Cleanse," "Supports Weight Loss Efforts,"
17 "Helps Eliminate Impurities," and "America's #1 Brand of Dieter's Tea." Each of these
18 statements is false and/or misleading because a reasonable consumer would understand
19 them to mean, taken together and in context, that the Product caused or supported
20 permanent weight loss, elimination of toxins from the body, and a reasonable consumer
21 would not understand that the Product is nothing more than a stimulant laxative that
22 should not be consumed regularly. According, the Product does not provide the
23 advertised benefits or possess the advertised qualities.

24
25 16. Defendant's marketing and promotion of the Product is supported by false
26 and misleading claims containing material omissions concerning the Product's efficacy
27 and supposed mechanism of action. Defendant had a duty to disclose the truth behind the
28 Product's supposed efficacy and mechanism of action, to correct the deception that its

1 partial disclosure created in minds of consumers.

2 17. When purchasing the Product, Plaintiff was seeking a product that would
3 help her lose weight, burn fat, cleanse and eliminate impurities, as Defendant promised,
4 represented and warranted. Moreover, Plaintiff sought a product that was generally
5 healthy, as the Product promised to help eliminate toxic waste from the body.

6 18. Plaintiff purchased the Product believing it had the qualities she sought,
7 based on the Product's deceptive labeling, but the Product was actually unacceptable to
8 her as it contained no weight loss, fat burning or toxic waste elimination properties or
9 benefits as advertised.

10 19. Moreover, like all reasonable consumers and members of the class, Plaintiff
11 considers a label's compliance with federal law a material factor in her purchasing
12 decisions. Plaintiff is generally aware that the federal government carefully regulates
13 packaged food products and therefore has come to trust that information conveyed on
14 packaged food labels is truthful, accurate, complete, and fully in accordance and
15 compliance with federal law. As a result, Plaintiff trusts she can compare competing
16 products on the basis of their labeling claims, to make a purchasing decision.

17 20. Like all reasonable consumers and members of the class, Plaintiff would not
18 purchase a food product she knew was misbranded under federal law, *see* 21 U.S.C. §
19 343, which the federal government prohibits selling, *id.* § 331, and which carries with its
20 sale criminal penalties, *id.* § 333. Plaintiff could not trust that the label of a product
21 misbranded under federal law is truthful, accurate and complete.

22 21. Similarly, like all reasonable consumers and members of the class, Plaintiff
23 would not purchase a food product she knew was an illegally marketed new drug for
24 which the FDA has not determined its safety and efficacy.

25 22. In light of the foregoing, reasonable consumers, including Plaintiffs and other
26 members of the class, were and are likely to be deceived by Defendant's advertising and
27 marketing practices as detailed herein.

28 ///

23. Further, Plaintiff and the Class purchased the Product instead of competing products based on the false statements and misrepresentations described herein.

24. Instead of receiving a product that has the weight loss, fat burning, or toxic waste elimination benefits and properties as advertised, Plaintiff and the Class received a product worth much less, or which was worthless, since the Product not only does not work but causes no effect or effects reverse of that advertised.

25. Plaintiff and the Class lost money as a result of Defendant's deception in that Plaintiff did not receive what she had paid for.

26. Plaintiff and the Class altered their position to their detriment and suffered damages in an amount equal to the amount they paid for the Product.

27. Plaintiff brings this action on behalf of herself and all other similarly situated consumers in the United States, *or in the alternative* California and states with laws that do not materially differ to California, to halt the dissemination of Defendant's deceptive and false advertising message about the Product, to correct the false and misleading perception it has created in the minds of consumers, and to compensate the Class members wronged by the Defendant's conduct. Plaintiff alleges violations of the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*, "CLRA"), Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*), breach of express warranty, and breach of implied warranty.

SPECIFIC FACTUAL ALLEGATIONS

28. Defendant has used and continues to use labeling, advertising, and the Internet, *inter alia*, to market that the Product "Supports Weight Loss Efforts," and "Helps Eliminate Impurities."

29. Each of Defendant's statements, *inter alia*, is false and/or misleading for the reasons set forth below.

Laci Le Beau Super Dieter's Tea: the Product

30. Defendant markets the Product in the following flavors:¹ Acai, All Natural

¹ See www.lacilebeau.com/Store/Products.aspx?cat=02 (last visited Dec. 16, 2013).

1 Botanicals, Apricot, Cinnamon Spice, Cranberry Twist, Lemon Mint, Peppermint and
2 Tropical Fruit.

3 31. Though the ingredients may vary in order for the tea to achieve the advertised
4 flavor, the key ingredients for purported weight loss do not: The key ingredient
5 combination in the Product is Senna (*Cassia angustifolia*) (leaf) and Stevia Powder and
6 Stevia Powdered Extract/ (*Stevia rebaudiana*) (leaf).

7 32. Cassia Anjustifolia, or senna leaves, have a laxative effect, but is not a bulk-
8 forming laxative. Bulk-forming laxatives are generally considered safe for regular use.

9 33. Senna is a stimulate laxative that stimulates bowel muscles to increase bowel
10 movements.

11 34. Real weight-loss cannot occur from Senna because the laxative only affects
12 the colon and does not prevent the absorption of calories, which occurs in the small
13 intestine.

14 35. Further, stimulate laxatives can cause dependence if the muscles “forget”
15 how to work on their own. Repeated use of laxatives over an extended period of time can
16 also slow the metabolism. (See www.dietspotlight.com/tadin-zendo-dieter's-tea-review/
17 last visited December 18, 2012).

18 36. The American Herbal Products Association (AHPA) warns against long-term
19 use of senna leaf and recommends that senna leaf products be labeled, “Do not use this
20 product if you have abdominal pain or diarrhea. Consult a healthcare provider prior to use
21 if you are pregnant or nursing. Discontinue use in the event of diarrhea or watery stools.
22 Do not exceed recommended dose. Not for long-term use.”

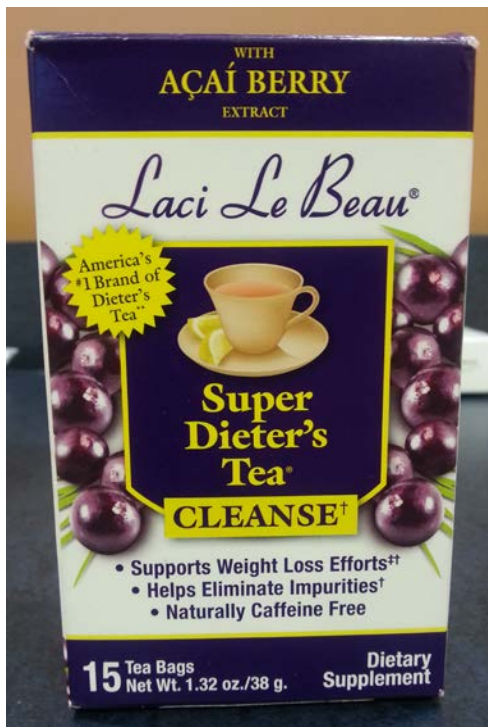
23 www.ahpa.org/Default.aspx?tabid=224#section_stimulant_laxativ (last visited May 25,
24 2013).

25 37. In addition, the State of California has established labeling requirements that
26 supersede the AHPA requirement for products sold in California. All dietary supplements
27 that contain aloe (*Aloe ferox* and other related species), buckthorn bark and berry
28 (*Rhamnus catharticus*), cascara sagrada bark (*Rhamnus purshiana*), rhubarb root (*Rheum*

1 palmaturn), and senna leaf and pod (Cassia acutifolia, C, angustifolia, C, senna) are
 2 required to bear the following label: “NOTICE: This product contains (name of
 3 substance(s) and common name(s) if different). Read and follow directions carefully. Do
 4 not use if you have or develop diarrhea, loose stools, or abdominal pain because (insert
 5 common name) may worsen these conditions and be harmful to your health. Consult your
 6 physician if you have frequent diarrhea or if you are pregnant, nursing, take medication, or
 7 have a medical condition.” Title 17, Cal. Code of Regs. §§ 10200 and 10750; *see also* 21
 8 C.F.R. § 310.545(a)(8); 58 Fed. Reg. 27636, 27640-27641. While the back of the Product
 9 bears this required disclaimer in small type, the front and sides of the packaging make
 10 advertising claims that directly contradict that disclaimer along with the known properties
 11 and dangers of repeated or ongoing use of Senna.

12 **Specific Misrepresentations, Material Omissions and Deceptive Facts**

13 ***a. Front Label***



26 38. Misleading Product Name: Defendant labels the Product as being a “Super
 27 Dieter’s Tea,” when it does not contain any ingredients to help one diet or lose weight.
 28 Further, as most diets last well longer than the limited time period in which a person

1 should not exceed the use of Senna, it is deceptive to label the Product a “Dieter’s Tea.”

2 39. Misleading Description: Defendant prominently describes the Product as a
3 “CLEANSE,” by highlighting this word in all capital letters with surrounding contrasting
4 color. This description is misleading in that it makes the Product seem as though it has
5 ingredients that will help to flush the body of toxins, when in reality it contains a laxative
6 ingredient.

7 40. Misleading Bullet Point: Defendant has a bullet point in purple text with
8 contrasting background clearly advertising that the Product “Supports Weight Loss
9 Efforts.” However, the product contains Senna, which is not effective in permanent
10 weight loss and may have an opposite effect and cause bloating and cramping. Further, as
11 most diets last well longer than the limited time period in which a person should not
12 exceed the use of Senna, making this claim false or deceptive.

13 41. Misleading Bullet Point: Defendant’s other bullet point in purple text with
14 contrasting background also clearly advertises that the Product “Helps Eliminate
15 Impurities.” This bullet point is misleading in that it makes the Product appear to be able
16 to eliminate toxins, or that the Product contains ingredients to do the same, when the
17 Product contains Senna and Stevia. Further, this claim would mislead the average
18 consumer into believe they could consume the Product on an ongoing basis, well
19 exceeding than the limited time period in which a person should not exceed the use of
20 Senna, making this claim false or deceptive.

21 42. Misleading Seal: Defendant highlights in a yellow seal on the box that the
22 Product is “America’s #1 Brand of Dieter’s Tea.” This seal is misleading in that it lures
23 consumers into thinking the Product is safe and/or effective by being a best-seller.
24 Further, it is misleading in that it calls the Product a “Dieter’s Tea.” However, the
25 ingredients of Senna and Stevia do not make the Product a “Tea,” or something for
26 “Dieter’s” to be consuming because Senna and the other ingredients in the Product do not
27 have any effect on the type of weight loss a consumer would seek (i.e., long-lasting).
28 Moreover, most diets last well longer than the limited time period in which a person

should not exceed the use of Senna, making this claim false or deceptive.

b. Back Label



43. Misleading Message: Defendant's label has a letter to its "Friend," stating that "Dieting can be... satisfying. Especially with the help of ...Super Dieter's Tea." This statement is misleading in that it makes the Product appear to be able to help with long-lasting weight loss or ongoing weight loss efforts, when the Product is actually supplying the consumer with a stimulant laxative that should not be consumed on a regular basis.

44. Misleading Description: Defendant's label calls the Product, "all natural." This statement is misleading because the source of the ingredients is unknown. Senna, stevia, or any number of the other ingredients may be processed and therefore not natural.

45. Misleading Message: Defendant highlights that the Product is a "low-calorie solution to help balance [one's] lifestyle and provide soothing results." This statement is misleading because the ingredients in the Product do not provide soothing results, if any

1 results. Senna can have effects that would not be very soothing such as cramping and
2 diarrhea.

3 46. Misleading Graphic: Defendant has a picture of a woman sipping a cup of
4 tea within its letter to its “Friend.” This picture is misleading in that it helps support that
5 the Product is soothing in some way, when really the ingredients may cause physical pain
6 and bloating to its consumers.

7 47. Misleading Slogan: Defendant puts noticeably under the brand name of the
8 product, its slogan “Your Cup of Tea.” This is a misleading statement because the
9 Product is not actually a tea, but a stimulant laxative.

10 48. Misleading Description: Defendant describes the Product as “All Natural.”
11 This statement is misleading because the source of the ingredients is unknown. Senna,
12 stevia, or any number of the other ingredients may be processed and therefore not natural.

13 49. Misleading Description: Defendant describes the Product as having “No
14 Artificial Ingredients. This statement is misleading because the source of the ingredients
15 is unknown. Senna, stevia, or any number of the other ingredients may be processed and
16 therefore, artificial.

17 RELIANCE AND INJURY

18 50. In purchasing the Product, Plaintiff was seeking a Product that had the
19 qualities described on the Product’s labeling.

20 51. Plaintiff read and relied on the following deceptive claims by Defendant
21 concerning the Product:

- 22 • “Super Dieter’s Tea”
- 23 • “All Natural”
- 24 • “No Artificial Ingredients”
- 25 • “Your Cup of Tea TM,”
- 26 • “Dieting can be ... satisfying... with the help of my flavorful all natural
- 27 Super Dieter’s Teas”
- 28 • “perfect, low-calorie solution to help balance your lifestyle and provide

1 soothing results”

- 2 • “CLEANSE”
- 3 • “Supports Weight Loss Efforts”
- 4 • “Helps Eliminate Impurities”
- 5 • “America’s #1 Brand of Dieter’s Tea”

6 52. Each of these statements is false and/or misleading because the Product is not
7 effective in achieving the results advertised. Defendant’s marketing and promotion is
8 misleading, false, and contains material omissions concerning the Product’s efficacy and
9 supposed mechanism of action.

10 53. Plaintiff believed the Product had the qualities she sought based on its
11 deceptive labeling, but the Product was actually unsatisfactory to Plaintiff for the reasons
12 described herein.

13 54. The Product costs more than similar products without misleading labeling.

14 55. Plaintiff paid more for the Product, and would have been willing to pay less,
15 or unwilling to purchase the Product at all, absent the false and misleading label
16 complained of herein.

17 56. Like all reasonable consumers and members of the public, Plaintiff would not
18 have purchased a Product if she knew it was misbranded under federal laws, which the
19 government prohibits selling, and which carries with its sale criminal penalties. *See* 21
20 U.S.C. §§ 331, 333, 343.

21 57. California Health and Safety Code, Division 104, Part 5, contains the
22 Sherman Food, Drug, and Cosmetic Law (“Sherman Law,” located at Cal. Health &
23 Safety Code §§ 109875-111915. The Sherman Law imposes identical requirements to the
24 federal FDCA. *See* Cal. Health & Safety Code §§ 110095, 110100, 110105, 110110,
25 110111, 110115, 110422 *et seq.*, 110660 *et seq.* The Sherman Law is explicitly
26 authorized by the FDCA. 21 U.S.C. § 343-1.

27 58. The Products are misbranded and unlawful under the Sherman Law due to
28 their false and misleading claims, as described herein.

1 household use, and not for resale or distribution purposes.

2 *Or, in the alternative,*

3 All purchasers in California and states with laws that do not materially differ from
4 the California laws pleaded herein, of Defendant's Laci Le Beau Super Dieter's Tea, for
5 household or personal use, from December 20, 2009 through and including the present.

6 68. Excluded from the Class are Defendant's officers, directors, shareholders,
7 and employees; the judicial officer(s) deciding this action and their immediate family
8 members and employees.

9 69. The persons in this Class are so numerous that the joinder of all such persons
10 is impracticable and Plaintiff contends the following common questions of law or fact:

11 (a) whether the challenged claims discussed above are false, misleading, or
12 reasonably likely to deceive a reasonable consumer;

13 (b) whether Defendant's conduct violates public policy;

14 (c) whether Defendant's conduct constitutes violations of the laws asserted
15 herein;

16 (d) whether Defendant engaged in false or misleading advertising;

17 (e) whether Plaintiff and Class members have sustained monetary loss and the
18 proper measure of that loss;

19 (f) whether Plaintiff and Class members are entitled to declaratory and
20 injunctive relief.

21 These questions of law and fact also predominate over questions that affect only
22 individual class members. The Product's labeling was uniform throughout the Class
23 Period, meaning all Class members were exposed to the same labeling.

24 70. Plaintiff's claims are typical of those of the Class and they will fairly and
25 adequately represent the interests of the Class. Plaintiff will serve as adequate Class
26 Representatives. Plaintiff's counsel is highly experienced in complex consumer class
27 action litigation, and will vigorously represent the best interests of the class. Plaintiffs
28 have no adverse or antagonistic interests to those of the Class.

71. Class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. The trial and the litigation of Plaintiffs' claims are manageable.

72. Unless a class-wide injunction is issued, Defendant will continue to commit the violations alleged, and the members of the Class and the general public will continue to be exposed to deceptive advertising or misled, to the detriment of the Class and the public.

73. Defendant has acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

For Violations of the Consumers Legal Remedies Act –

Civil Code Section 1750 *et seq.*

[On Behalf of Plaintiff and the Class and Against the Defendant]

74. Plaintiff repeats, re-alleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

75. At all times relevant herein, there was in full force and effect the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the "Consumers Legal Remedies Act") and similar deceptive practice acts in other states. Plaintiffs are consumers as defined by Civil Code § 1761(d). The Product is a good within the meaning of Civil Code § 1761(a).

76. Defendant violated and continues to violate the Consumers Legal Remedies Act by engaging in the following practices proscribed by § 1770(a), in transactions with Plaintiffs and the Class which were intended to result in, and did result in, the sale of the Products:

- (a) Advertising that the Product is effective for weight loss when it is not;
- (b) Representing that the Product has characteristics, uses or benefits which it

1 does not have;

2 (c) Representing that the Product is of a particular standard, quality or grade
3 when they are of another;

4 (d) Advertising the Product with intent not to sell them as advertised;

5 (e) Representing that the Product has been supplied in accordance with a
6 previous representation when it does not;

7 (f) Engaging in conduct that creates a likelihood of confusion or
8 misunderstanding.

9 77. The Defendant's representations amount to false and/or deceptive acts or
10 practices in violation of the Consumers Legal Remedies Act.

11 78. Defendant's actions described herein similarly violated the consumer
12 protection statutes in effect in every state in which Defendant or their affiliates do
13 business.

14 79. Defendant violated the Consumers Legal Remedies Act, and similar
15 provisions in the Consumers Legal Remedies Acts of other jurisdictions within the United
16 States, by making the representations, claims and nondisclosures for the Products, as
17 described herein, when it knew, or should have known, that the representations and
18 advertisements were incomplete, false and misleading.

19 80. Plaintiff and other members of the Class relied upon the Defendant's material
20 misrepresentations as to the quality and attributes of the Product.

21 81. Plaintiff and other members of the Class were likely to be deceived by
22 Defendant's representations about the quality and attributes of the Product, including but
23 not limited to the purported ability of the Product to cause weight loss.

24 82. Plaintiff and other Class members would not have purchased the Product had
25 they known Defendant's claims were misleading, unfounded or untrue, and the true nature
26 of the Product, causing them injury in fact in the form of the lost purchase price for the
27 Products.

28 ///

83. Pursuant to section 1782 *et seq.* of the Consumers Legal Remedies Act, Plaintiff notified Defendant in writing by certified mail of the particular violations of § 1770 of the Act as to the Product and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of its intent to so act. Defendant's wrongful business practices regarding the Product constituted, and constitute, a continuing course of conduct in violation of the Consumers Legal Remedies Act since Defendant is still representing that the Product has characteristics, uses, benefits, and abilities which are false and misleading, and have injured and continue to injure Plaintiff and the Class. Copies of Plaintiff's letters are attached as **Exhibit 1** hereto.

84. Pursuant to California Civil Code § 1780(a), Plaintiff and the Class seek an order of this Court enjoining the Defendant from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law; awarding Plaintiff and the Class restitution and disgorgement; awarding Plaintiff and the Class damages and punitive damages; and for attorney's fees and costs under *id.* § 1780(e).

SECOND CAUSE OF ACTION

Violation of California Business & Professions

Code Section 17200, *et seq.* (Unfair Competition Law)

[On Behalf of Plaintiff and the Class and Against the Defendant]

85. Plaintiff repeats, re-alleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

86. Business & Professions Code Section 17200 prohibits any "unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." For the reasons discussed above, Defendant has engaged in "unlawful" business acts or practices by, among other things, making misrepresentations and omissions of material facts, as set forth more fully above, and violating, among other statutes, Civil Code §§ 1572, 1573, 1709, 1710, 1711, 1770, Business & Professions Code § 17500, *et seq.*, Health & Safety Code § 109875, *et. seq.*, and the common law.

1 87. Defendant's conduct is further "unlawful" because it violates the California
2 Sherman Law, see Cal. Health & Safety Code § 109875-111915 (specifically *id.* §§
3 110095, 110100, 110105, 110110, 110111, 110115, 110422 *et seq.*, 110660 *et seq.*),
4 which incorporates the identical provisions of the FDCA.

5 88. Defendant's actions described herein similarly violated the consumer
6 protection statutes and statutes prohibiting unfair, unlawful or deceptive business acts or
7 practices in effect in every state in which Defendant or their affiliates do business, and the
8 common law of those states.

9 89. Plaintiff and the Class reserve the right to allege other violations of law
10 which constitute other unlawful business acts or practices. Such conduct is ongoing and
11 continues to this date.

12 90. Defendant's acts, omissions, misrepresentations, practices and non-
13 disclosures as alleged herein also constitute "unfair" business acts and practices within the
14 meaning of Business & Professions Code Section 17200, *et seq.*, and similar statutory
15 provisions in other jurisdictions within the United States, in that their conduct is
16 substantially injurious to consumers, offends public policy, and is immoral, unethical,
17 oppressive, and unscrupulous because the gravity of the conduct outweighs any alleged
18 benefits attributable to such conduct. Plaintiff alleges violations of consumer protection,
19 unfair competition and truth in advertising laws resulting in harm to consumers. Plaintiff
20 asserts violations of the public policy of engaging in false and misleading advertising,
21 unfair competition and deceptive conduct towards consumers. There were reasonably
22 available alternatives to further Defendant's legitimate business interests, other than the
23 conduct described herein.

24 91. Defendant's claims, nondisclosures and misleading statements, as more fully
25 set forth above, were also false, misleading and/or likely to deceive the consuming public
26 within the meaning of Business & Professions Code Section 17200 as to "fraudulent"
27 conduct, and similar provisions protecting consumers in other jurisdictions within the
28 United States. Defendant's labeling, website and other advertisements, as described

1 herein, were false, deceptive, and/or likely to deceive a reasonable consumer because
2 Defendant is marketing weight loss teas when, in reality, the Product has no weight loss
3 properties, and/or has less weight loss properties than claimed, and/or because
4 Defendant's omitted material information from the Products' advertising as described
5 herein, such that if Plaintiffs and members of the Class had known those material facts,
6 they would not have purchased the Product.

7 92. Plaintiff and the Class were exposed to Defendant's advertising as alleged
8 herein.

9 93. Defendant's conduct caused and continues to cause substantial injury to
10 Plaintiff and members of the Class. Plaintiff has suffered injury in fact as a result of
11 Defendant's unfair conduct, in the form of the lost purchase price of the Product, which
12 she purchased after being exposed to Defendant's advertising statements, as described
13 herein.

14 94. Defendant's conduct caused and continues to cause substantial injury to
15 Plaintiff and the other members of the Class. Plaintiff and the Class continue to be
16 exposed to Defendant's false and/or misleading advertising every time they shop for
17 dietary supplements and encounter Defendant's false or deceptive advertising on store
18 shelves. Defendant's competitors will also continue to suffer from Defendant's unfair or
19 deceptive business conduct if injunctive relief is not afforded.

20 95. Defendant has thus engaged in unlawful, unfair and fraudulent business acts
21 and practices and false advertising, entitling Plaintiff and the Class to injunctive relief
22 against Defendant, as set forth in the Prayer for Relief.

23 96. Pursuant to Business & Professions Code Section 17203, Plaintiff and the
24 Class seek an order requiring Defendant to immediately cease such acts of unlawful,
25 unfair and fraudulent business practices and requiring Defendant to engage in a corrective
26 advertising campaign.

27 97. Plaintiff and the Class members are likely to be damaged by Defendant's
28 deceptive trade practices, as Defendant continues to disseminate misleading advertising

1 and engage in conduct that violates the UCL. Thus, injunctive relief enjoining this
 2 deceptive practice, and retrospective injunctive relief to remedy Defendant's past conduct,
 3 is proper.

4 98. Plaintiff and the Class also seek an order for the disgorgement and restitution
 5 of all monies from the sale of Defendant's Product, which were unjustly acquired through
 6 acts of unlawful, unfair, and/or fraudulent competition.

7 **THIRD CAUSE OF ACTION**

8 **Violations of California Business and Professions**

9 **Code Section 17500 *et seq.* (False Advertising Law)**

10 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

11 99. Plaintiff repeats, re-alleges and incorporates by reference each and every
 12 allegation contained above as if fully set forth herein.

13 100. Plaintiff has standing to pursue this claim as Plaintiff suffered injury in fact
 14 as a result of Defendant's actions as set forth herein. Specifically, prior to the filing of
 15 this action, Plaintiff purchased the Product in reliance upon Defendant's marketing claims.
 16 Plaintiff used the Product as directed, but the Products did not work as advertised, nor
 17 provide any of the promised benefits.

18 101. Defendant's business practices as alleged herein constitute unfair,
 19 deceptive, untrue, and misleading advertising pursuant to California Business and
 20 Professions Code section 17500, *et seq.* because Defendant has advertised its Product in a
 21 manner that is untrue and misleading, or that Defendant knew was untrue or misleading,
 22 or omitted material information from their advertising which Defendant had a duty to
 23 disclose.

24 102. Defendant's wrongful business practices have caused injury to Plaintiff and
 25 the Class, in the form of the lost purchase price of the Product. Plaintiff and the Class
 26 purchased the Product after being exposed to Defendant's false or deceptive advertising
 27 claims, as described herein.

28 103. Defendant's conduct caused and continues to cause substantial injury to

1 Plaintiff and the other members of the Class. Plaintiff and the Class continue to be
 2 exposed to Defendant's false and/or misleading advertising every time they shop for
 3 dietary supplements and encounter Defendant's false or deceptive advertising on store
 4 shelves. Defendant's competitors will also continue to suffer from Defendant's unfair or
 5 deceptive business conduct if injunctive relief is not afforded.

6 104. Pursuant to section 17535 of the California Business and Professions Code,
 7 Plaintiff and the Class seek an order of this Court enjoining Defendant from continuing to
 8 engage in deceptive business practices, false advertising, and any other act prohibited by
 9 law, including those set forth in this Complaint.

10 105. Plaintiff and the Class also seek an order for the disgorgement and
 11 restitution of all monies from the sale of Defendant's Products, which were unjustly
 12 acquired through acts of unlawful, unfair, and/or fraudulent competition.

13 **FOURTH CAUSE OF ACTION**

14 **Breach of Express Warranty**

15 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

16 106. Plaintiff repeats, re-alleges and incorporates by reference each and every
 17 allegation contained above as if fully set forth herein.

18 107. On the Product's labels Defendant expressly warranted that the Product was
 19 effective, proper, and safe for its intended use. Defendant made affirmations of fact or
 20 promises, or description of goods, which were "part of the basis of the bargain," in that
 21 Plaintiff and the Class purchased the Product in reasonable reliance on the Product's
 22 labeling statements. Cal. Com. Code §2313(1); *see also Zwart v. Hewlett-Packard Co.*,
 23 2011 WL 3740805 (N.D. Cal., Aug. 23, 2011) (holding that online assertions can create
 24 warranties). The quoted language from the Product's labels, as contained in this
 25 Complaint, constituted the express warranties.

26 108. Defendant breached the express warranties with Plaintiff and the Class by
 27 not selling the Product that provided the benefits described above, and that breach actually
 28 and proximately caused injury in the form of the lost purchase price for the Product.

FIFTH CAUSE OF ACTION

[On Behalf of Plaintiff and the Class and Against the Defendant]

111. Defendant, in its sale, marketing and promotion of its Product, and the acts and omissions as set forth herein, made representations to Plaintiff and the Class in the form of representations on the Product's labels. The quoted language from the Product's labels, as contained in this Complaint, constituted warranties or merchantability.

15 113. Defendant is a merchant with respect to the goods of this kind which were
16 sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other consumers
17 an implied warranty that those goods were merchantable.

115. As a result of Defendant's conduct, Plaintiff and the Class did not receive goods as impliedly warranted by Defendant to be merchantable in that they did not conform to the promises and affirmations made on the container or label of the goods. *See* Cal. Com. Code §§ 2314(1), 2314(2)(f).

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself, all others similarly situated, and the general public, pray for a judgment against Defendant on each cause of action:

A. For an order declaring this action to be a proper Class Action and requiring Defendant to bear the costs of class notice;

B. For an order awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein;

C. For an order awarding restitution and disgorgement of Defendant's revenues to Plaintiff and the proposed Class members;

D. For an order compelling Defendant to engage in a corrective advertising campaign to inform the public concerning the true nature of the Product;

E. For an order awarding damages, and punitive damages, to Plaintiffs and the Class against Defendant, as provided by statute or applicable law;

F. For an order awarding attorneys' fees and costs to Plaintiff;

G. For an order providing for all other such equitable relief as may be just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: January 14, 2014

/s/ Ronald A. Marron

RONALD A. MARRON

**THE LAW OFFICES OF
RONALD A. MARRON**

RONALD A. MARRON

ron@consumersadvocates.com

SKYE RESENDES

skye@consumersadvocates.com

ALEXIS M. WOOD

alexis@consumersadvocates.com

651 Arroyo Drive

San Diego, CA 92103

Telephone: (619) 696-9006

Facsimile: 619) 564-6665

*Counsel for Plaintiff and the
Proposed Class*

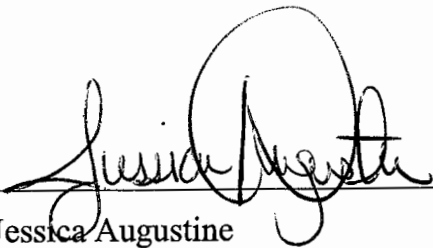
1 I, Jessica Augustine, declare as follows:

2 1. I am the Plaintiff in this action. I make this affidavit as required by
3 California Civil Code Section 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of
5 this action because Defendant is doing business in this county.

6 I declare under penalty of perjury under the laws of the United States that
7 the foregoing is true and correct.

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9 Dated: DEC 26, 2013

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11 Jessica Augustine

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Table of Exhibits

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE NUMBERS
Exhibit 1	Plaintiff's CLRA letters	1-8

EXHIBIT 1

Law Offices of
Ronald A. Marron
A Professional Law Corporation

651 Arroyo Drive
San Diego, CA 92103

Tel: 619.696.9006
Fax: 619.564.6665

December 9, 2013

Via: Certified Mail, (receipt acknowledgment with signature requested)

Natrol Products, Inc.
AGENT FOR SERVICE OF PROCESS:
Mesrop G. Khoudagoulian
333 North Brand Blvd
Glendale, CA 91203

Natrol Products, Inc.
Attn: LEGAL DEPARTMENT
21411 Prairie St
Chatsworth, CA 91311

RE: NOTICE: Violations of the California Consumer Legal Remedies Act and Duty to Preserve Evidence

Dear Sir or Madam,

PLEASE TAKE NOTICE that this letter constitutes notice under the California Consumer Legal Remedies Act, ("CLRA"), California Civil Code Section 1750, *et seq.*, (the "ACT") — pursuant specifically to Civil Code Section 1782 — notifying **Natrol Products, Inc.** (collectively, "YOU" and "YOUR") of violations of the Act and of our demand that YOU remedy such violations within thirty (30) days from your receipt of this letter.

This firm represents Ms. Jessica Augustine. Ms. Augustine purchased "Laci Le Beau Super Dieter's Tea," ("Product") from Ross in La Mesa, California, around May or June of 2013. Ms. Augustine was exposed to and saw YOUR claims about the Product, purchased the Product in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising.

YOU falsely advertise and market the Product by putting false and misleading claims on the label, stating or suggesting that the Product will "Eliminate Impurities", "Cleanse," and that the Product "Supports Weight Loss Efforts," when in fact the Product is nothing more than senna leaf ("Senna") a stimulant laxative. YOU also falsely advertise and market the Product as being, "America's #1 Selling Dieter's Tea," and a "Dietary Supplement."

Because the Product has no weight loss characteristics, it is not effective for weight loss or appetite suppression and therefore does not work as advertised. Moreover, Senna can actually thwart weight loss

by slowing the metabolism and causing chronic bloating and constipation. Also, Senna may cause abdominal cramps, nausea, fainting, breathing difficulties, fluctuations in body temperature and even organ failure.

Additionally, you label the product as a "Dietary Supplement," when in fact it is not a supplement as that term is understood under the Dietary Supplement Health and Education Act of 1994, which mandates "substances" in consumed dietary supplements must contribute and retain "nutritive value." Here, the Product contains non-nutritive mixtures of roots, barks and herbs, along with the non-nutritive sweetener, stevia, and serves as a delivery system for Senna, which is not only non-nutritive but actually robs the body of nutrients by causing diarrhea.

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR products or services.

In addition to the violations previously identified, please take further notice that YOUR Product's claims constitute a breach of express and implied warranties. Absent YOUR compliance with YOUR obligations under such warranties and cure of said breach (see 15 U.S.C. §§ 2301, *et seq.*), our client intends to pursue a class action with this regard.

In conclusion, YOUR material misrepresentations are deceiving customers into purchasing YOUR Product under the representation the Product provides weight loss and weight management benefits, when in fact it does not.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices in violation of the CLRA include, but are not necessarily limited to:

§ 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

§ 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.

§ 1770(a)(9): advertising goods with intent not to sell them as advertised.

§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and products.

Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies, available for violations of the CLRA, which will be requested in the class action complaint on behalf of our client, Ms. Augustine and all other similarly-situated U.S. residents:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. See, e.g., *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and laboratory records that related to the formulation and marketing of YOUR products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

In addition, California Civil Code Section 1780 (b) provides in part that: "Any consumer who is a **senior citizen or a disabled person**, as defined in subdivision (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedied specified therein, up to **five thousand dollars** (\$5,000)... [emphasis added]".

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

THE LAW OFFICES OF RONALD A. MARRON APLC

/s/ Ronald A. Marron

Ronald A. Marron

Attorney for Jessica Augustine and all others similarly situated

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Natrol Products, Inc.
Attn: LEGAL DEPARTMENT
 21411 Prairie St
 Chatsworth, CA 91311

2. Article Number
(Transfer from servi

7009 1680 0001 2316 8820

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

William Valenzuela

C. Date of Delivery

2/12/13

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

Law Offices of
Ronald A. Marron
A Professional Law Corporation

651 Arroyo Drive
San Diego, CA 92103

Tel: 619.696.9006
Fax: 619.564.6665

December 12, 2013

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YOU falsely advertise and market the Product by putting false and misleading claims on the label, stating or suggesting that the Product is "America's #1 Brand of Dieters Tea", is a "Super Dieter's Tea", "Supports Weight Loss Efforts," and "Helps Eliminate Impurities." In fact the Product is nothing more than senna leaf ("Senna"), a stimulant laxative. YOU also falsely advertise and market the Product as containing "Nature's finest botanicals" claiming "Your Diet is in the Bag," and that the Product "will help cleanse your body of impurities" and "support your weight loss efforts."

Because the Product has no weight loss characteristics, it is not effective for weight loss or appetite suppression and therefore does not work as advertised. Moreover, Senna can actually thwart weight loss by slowing the metabolism and causing chronic bloating and constipation. Also, Senna may cause abdominal cramps, nausea, fainting, breathing difficulties, fluctuations in body temperature and even organ failure. In fact, the Product is not a "tea" at all because it only contains senna leaf, acai and stevia.

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR products or services.

In addition to the violations previously identified, please take further notice that YOUR Product's claims constitute a breach of express and implied warranties. Absent YOUR compliance with YOUR obligations under such warranties and cure of said breach (see 15 U.S.C. §§ 2301, *et seq.*), our client intends to pursue a class action with this regard.

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/s/ Ronald A. Marron

Ronald A. Marron

Attorney for Jessica Augustine and all others similarly situated

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<p>1. Article Addressed to:</p> <p style="text-align: center;">Natrol Products, Inc. Attn: LEGAL DEPARTMENT 21411 Prairie St Chatsworth, CA 91311</p>		<p>B. Received by (Printed Name) C. Date of Delivery WILLIAM VALENZUELA 12/19/13</p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>7013 1710 0001 2274 2789</p>	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	